

JUDGE SCHOFIELD

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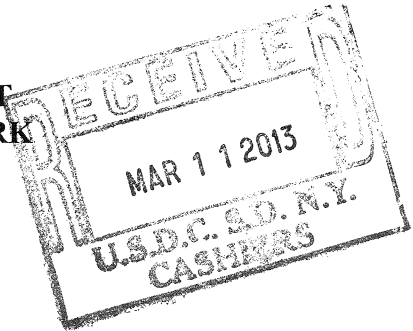
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**13 CV 1606-LGS**  
(ECF Case)

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**



BWP MEDIA USA, INC.

Plaintiff,

vs.

MEDIAITE, LLC d/b/a ABRAMS MEDIA,

Defendants.

Docket No:

DEMAND FOR JURY TRIAL

COMPLAINT FOR:

- 1) COPYRIGHT INFRINGEMENT; AND
- 2) CONTRIBUTORY COPYRIGHT INFRINGEMENT

BWP MEDIA, INC., by and through its undersigned counsel, states and alleges as follows:

**INTRODUCTION**

1. Plaintiff BWP MEDIA, INC. ("BWP") provides entertainment-related photojournalism goods and services. In particular, BWP owns the rights to a multitude of photographs featuring celebrities, which it licenses to online and print publications.
2. BWP has obtained U.S. copyright registrations covering many of its photographs, and others are the subject of pending copyright applications.
3. Defendant MEDIAITE, LLC d/b/a ABRAMS MEDIA ("MEDIAITE") owns and

operates a website known as “www.themarysue.com” dedicated to geek girl culture, including television shows and movies.

4. Without permission or authorization from BWP, MEDIAITE copied, modified, and displayed BWP’s copyright protected photographs on MEDIAITE’s website, www.themarysue.com.

5. BWP engaged in this misconduct knowingly and in violation of the United States copyright laws.

6. BWP has been substantially harmed as a result of MEDIAITE's misconduct.

### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction over the federal copyright infringement claims pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1331. This Court has supplemental jurisdiction over the claims arising under state law pursuant to 28 U.S.C. §1367(a) in that the state claims are so related to the claims over which the court has original jurisdiction that they form part of the same case or controversy.

8. This Court has personal jurisdiction over MEDIAITE because MEDIAITE maintains its principal place of business in New York County and purposely directs substantial activities at the residents of New York by means of the website described herein.

9. Venue is proper under 28 U.S.C. §1391(a)(2) because the Defendant does business in this Judicial District or because a substantial part of the events or omissions giving rise to the claim occurred in this Judicial District.

### **PARTIES**

10. BWP is a California corporation and maintains its principal place of business in Los Angeles County, California.

11. On information and belief, MEDIAITE, a Delaware limited liability company with a principal place of business in New York County, New York, is liable and responsible to Plaintiff based on the facts herein alleged.

### **FACTUAL ALLEGATIONS**

#### **BWP's Business**

12. BWP provides entertainment-related photojournalism goods and services. In particular, BWP owns the rights to a multitude of photographs which it licenses to online and print publications.

13. BWP has invested significant time and money in building its photograph portfolio.

#### **BWP's Copyrights**

14. BWP has obtained U.S. copyright registrations covering many of its celebrity photographs, and others are the subject of pending copyright applications.

15. BWP's photographs are original, creative works in which BWP owns protectable copyright interests.

16. BWP owns several active and valid copyright registrations with the United States Copyright Office (the "USCO"), which registrations cover BWP's photographs.

17. BWP also has filed several copyright applications with the USCO, which are presently pending.

18. BWP applied for copyright registration for a collection of celebrity photographs, USCO Application No. 1-838167702, which included photographs of actors Michael Cera and

Jason Bateman on the set of Arrested Development (the "Arrested Development Photographs" or "Photographs.")

#### **MEDIAITE's Website**

19. On information and belief, MEDIAITE is the registered owner of the website located at [www.themarysue.com](http://www.themarysue.com) (the "Website"). On information and belief, MEDIAITE operates the Website and is responsible for all Website content.

20. The Website is monetized in that it contains paid advertisements. On information and belief, MEDIAITE profits from these activities.

21. According to [yandalo.com](http://yandalo.com), the Website averages approximately 54,000 page views per day.

#### **MEDIAITE's Misconduct**

22. Without permission or authorization from BWP, MEDIAITE copied, modified, and/or displayed BWP's photographs on the Website, in violation of BWP's copyrights.

23. Specifically, on or about August 11, 2012 the Arrested Development Photographs were posted on the Website by Alanna Bennett, the Website's Assistant Editor, under "Arrested Development Season Four Filming and News."

24. The Photographs were posted without license or permission, thereby infringing on the Copyrights (the "Infringement").

25. On information and belief, MEDIAITE was aware of facts or circumstances from which the Infringement was apparent. The Photographs were posted on its Website by its Assistant Editor. Based on this totality of circumstances, MEDIAITE cannot claim that it is not aware of the widespread infringing activities, including the Infringement, on the Website. Such a claim would amount to willful blindness to the Infringement on the part of MEDIAITE.

26. On information and belief, MEDIAITE engaged in the Infringement knowingly and in violation of United States copyright laws.

27. On information and belief, MEDIAITE has received a financial benefit directly attributable to the Infringement. Specifically, by way of the Infringement, MEDIAITE increased traffic to its Website and, in turn, realizes an increase in its advertising revenues and/or merchandise sales.

28. As a result of MEDIAITE's misconduct, BWP has been substantially harmed.

**FIRST COUNT**  
**(Copyright Infringement, 17 U.S.C. § 501 *et seq.*)**

29. BWP's repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

30. The Photographs are original, creative works in which BWP owns protectable copyright interests.

31. BWP has not licensed MEDIAITE or any of its users to use the Photographs in any manner, nor has BWP assigned any of its exclusive rights in the Copyrights to MEDIAITE.

32. Without permission or authorization from BWP and in willful violation of BWP's rights under 17 U.S.C. §106, MEDIAITE reproduced the Photographs.

33. On information and belief, without permission or authorization from BWP and in willful violation of BWP's rights under 17 U.S.C. §106, MEDIAITE displayed the Photographs on the Website.

34. MEDIAITE's reproduction of the Photographs and display of the Photographs on the Website constitute copyright infringement.

35. On information and belief, thousands of people have viewed the unlawful copies

of the Photographs on the Website.

36. On information and belief, MEDIAITE had knowledge of the copyright infringement alleged herein and had the ability to stop the reproduction and display of BWP's copyrighted material.

37. MEDIAITE's copyright infringement has damaged BWP in an amount to be proven at trial.

**SECOND COUNT**  
**(Contributory Copyright Infringement)**

38. BWP repeats and incorporates by reference the allegations contained in the preceding paragraphs, as though set forth in full herein.

39. BWP is informed and believes, and on that basis alleges, that MEDIAITE willfully and knowingly created a link to another website where the copyrighted Photographs are being displayed without permission.

40. By creating a link on the Website to "Cherylau" at <http://cherylau.tumblr.com/post/29184423774/george-michael-goes-to-uci-my-god-best-thing>, a website where the copyrighted Photographs are being displayed without permission, MEDIAITE is enabling, inducing, facilitating, and materially contributing to each act of infringement.

41. MEDIAITE's conduct constitutes contributory infringement of BWP's copyrights and exclusive rights in the Photographs in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

42. MEDIAITE's contributory copyright infringement has damaged BWP in an amount to be proven at trial.

**PRAYER FOR RELIEF**

**WHEREFORE**, BWP respectfully requests judgment as follows:

43. That the Court enter a judgment finding that MEDIAITE has infringed on BWP's Copyrights in the Photographs in violation of 17 U.S.C. § 501 et seq.;
44. That the Court award damages and monetary relief as follows:
- a. Statutory damages against MEDIAITE pursuant to 17 U.S.C. §504(c) of \$150,000 per infringement or in the alternative BWP's actual damages and MEDIAITE's wrongful profits in an amount to be proven at trial;
  - b. BWP's attorneys' fees pursuant to 17 U.S.C. §505;
  - c. BWP's costs; and
45. Such other relief that the Court determines is just and proper.

DATED: March 5, 2013

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**REQUEST FOR JURY TRIAL**

Plaintiff hereby demands a trial of this action by jury.

DATED: March 5, 2013

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